

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN MONTGOMERY STATON,

Defendant-Appellant.

UNPUBLISHED

January 4, 2007

No. 262292

Oakland Circuit Court

LC No. 04-196104-FC

Before: Borrello, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of six counts of first-degree criminal sexual conduct, MCL 750.520b. The prosecutor proceeded under two theories: (1) defendant sexually penetrated the victim and was armed with a weapon, contrary to MCL 750.520b(1)(e); and/or (2) defendant sexually penetrated the victim, caused personal injury to the victim, and force or coercion was used to accomplish the sexual penetration, contrary to MCL 750.520b(1)(f). Defendant was sentenced to 46 to 70 years' imprisonment for each conviction. Defendant appeals as of right. For the reasons set forth in this opinion, we affirm the convictions and sentences of defendant.

Defendant initially raises an issue regarding the admissibility of MRE 404(b) evidence that was admitted by the trial court. Defendant argues that the trial court abused its discretion by allowing the testimony of three women who complained that defendant had sexually assaulted them, because there was no sufficient commonality among the sexual assaults to qualify as a common scheme, plan, or system. Defendant argues that the prior bad acts occurred approximately ten years before the charged offenses and that the circumstances surrounding each assault are not sufficiently similar to the facts of the present case. According to defendant, the only purpose for introducing this evidence was to demonstrate the bad character of defendant and his propensity to commit sexual assaults. Therefore, defendant contends, the probative value of this evidence was outweighed by the danger of unfair prejudice and it was more probable than not that the outcome of the trial would have been different if the evidence had not been admitted.

A trial court's decision to admit evidence will be reversed only for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). The abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). When the trial court selects one of these principled

outcomes, it has not abused its discretion. *Id.* When a trial court's decision regarding the admission of evidence involves a preliminary question of law, this Court's review is de novo. *Id.*

Trial testimony revealed that the victim of defendant's sexual abuse, who was 23 years old at the time, met defendant while she was a bartender. Defendant offered the victim a job hanging vinyl siding, and she accepted. After completing the job for defendant, the victim sought to be paid. After a few unsuccessful attempts to meet with defendant to obtain payment, defendant called the victim and requested that she come over to his condominium to pick up her payment. Upon arriving at defendant's condominium, the victim sensed that defendant was acting strangely. He took her by the hand and began to walk her toward the hallway. According to the victim, defendant suddenly and forcefully pushed her into the bedroom and slammed her onto the bed. During the course of the next four and one half hours, defendant raped the victim. According to the victim, the rape consisted of defendant performing oral sex on her, forcing her to perform oral sex on him, penetrating her vaginally and anally with his penis and with a 12 inch long wooden object, forcing alcohol down her throat, punching her and choking her. The victim testified that at one point, defendant duct taped her hands behind her back, telling her that she needed to be punished for crying and resisting him. Throughout the incident, defendant possessed a knife which he kept either in his hand or within arm's reach. He repeatedly threatened to kill the victim if she put up a fight or did not comply with his orders. She eventually escaped after defendant passed out. After the victim reported the incident, the police questioned defendant. Although defendant admitted to all of the sexual acts testified to by the victim, he contended that they were consensual.

The prosecution moved to admit evidence of defendant's prior bad acts involving defendant's sexual abuse of other women. The trial court granted the motion. As a result of the ruling, three women testified at trial that they were sexually assaulted by defendant.

MRE 404(b) governs the admission of evidence of prior bad acts. It provides:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

To be admissible under MRE 404(b), bad acts evidence generally must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). Additionally, the trial court may provide a limiting instruction if requested. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994). A proper purpose is one other than establishing the defendant's character to show his propensity to commit the offense. *Id.* at 74. Evidence of misconduct similar to that charged is logically relevant to show that the charged act occurred if the charged and other acts are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system; they need not be part of a single

continuing conception or plot. *People v Sabin (After Remand)*, 463 Mich 43, 63-64; 614 NW2d 888 (2000).

The first MRE 404(b) witness testified that defendant tackled her and duct taped her hands behind her back. She stated that defendant put a knife to her throat and threatened to kill her if she did not comply with his directives. According to the witness, defendant removed her clothing, penetrated her vagina with his penis, and forced her to perform oral sex on him. Defendant then passed out and she was able to run away. At trial, the victim in the instant case testified that she was tackled from behind, that defendant used duct tape to tie her hands behind her back, that defendant threatened her life with a knife, and that defendant forcibly penetrated her vagina with his penis and forced her to perform oral sex on him. Like the witness, the victim in the instant case asserted that she was able to run away when defendant passed out. Thus, relative to the first witness, the testimony clearly was relevant to demonstrate the common plan, scheme or system used by defendant when sexually assaulting women.

The second MRE 404(b) witness testified that defendant pushed her onto a bed, threatened her life with a gun and penetrated her vagina with his penis. Thus, the testimony of the second witness again demonstrates a common plan scheme or system. The third witness testified that defendant showed her a weapon, slammed her down onto a bed, and tried to pull off her clothes and tie her hands behind her back with duct tape. Further, the victim in the instant case and two of the MRE 404(b) witnesses were of similar ages at the time they were assaulted. Review of the record indicates that all of the assaults were sufficiently similar for the uncharged acts to be probative of defendant's culpability of the charged offense. Defendant's contention that the sexual assaults do not share any meaningful similarities is not persuasive. The circumstances suggest that defendant had a plan, scheme, or system for perpetrating sexual assaults against women. Further, the probative value of the evidence was not substantially outweighed by unfair prejudice, and the trial court did give a limiting instruction. Accordingly, the evidence was properly admitted pursuant to MRE 404(b).

Defendant next argues that there was insufficient evidence to convict him of first-degree criminal sexual conduct. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The elements of first-degree criminal sexual conduct are: (1) sexual penetration with another person, and (2) the defendant is armed with a weapon or an article used or fashioned in a manner to cause the victim to reasonably believe it to be a weapon, or, the defendant causes personal injury to the victim and force or coercion is used to accomplish the sexual penetration. *People v Asevedo*, 217 Mich App 393, 395; 551 NW2d 478 (1996).

Defendant admits that he had sexual intercourse with the victim, using a wooden object on her, choking her, punching her, and engaging in oral and anal sex with her. However, he contends that all the sexual acts were consensual. Review of the record reveals that the victim's story remained consistent from her initial details revealed to a friend to the information provided to various police officers and in her courtroom testimony. The victim testified at length

concerning the various unconsented to and forceful sexual assaults defendant allegedly perpetrated against her. She testified that, throughout the assault, defendant was in possession of a knife or it was within arm's reach. Thus, there was sufficient evidence presented at trial from which a reasonable trier of fact could conclude that the element of MCL 750.520b(1)(e) had been proven beyond a reasonable doubt. Further, the victim suffered physical injuries that were consistent with a violent sexual assault. The sexual assault nurse who evaluated the victim testified that she had a sticky gray residue on her arms, redness on her arms, and bruises on various parts of her body. From this evidence, the jury could reasonably conclude that the elements of MCL 750.520b(1)(f), requiring personal injury to the victim and some element of force or coercion, had been proven beyond a reasonable doubt. In addition, police found some of the victim's clothing and pieces of duct tape at defendant's condominium. Furthermore, bottles of Jose Cuervo and Arbor Mist, from which the victim testified alcohol was poured down her throat, were found in the dumpster outside of defendant's condominium.

This case ultimately involved a credibility contest between the victim and defendant in which the fact-finder was required to determine whether to believe the victim's assertions that the sexual acts were not consensual or defendant's contention that the sexual acts were consensual. Because the fact-finder is in a superior position to judge the witnesses' credibility, appellate courts defer to the fact-finder's resolution of such issues. *People v Parker*, 230 Mich App 337, 341; 584 NW2d 336 (1998). Given the facts of this case, and the deference this Court affords the fact-finder in judging the credibility of witnesses, we conclude that it was reasonable for a rational jury to believe the victim's testimony that she was sexually assaulted by defendant and that defendant was armed with a weapon or caused her personal injury and used force or coercion.

Affirmed.

/s/ Stephen L. Borrello
/s/ Janet T. Neff
/s/ Jessica R. Cooper